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**MODEL ZONE II CONSERVATION RESTRICTION
FOR DRINKING WATER SUPPLY PROTECTION**

Updated 2006

This Model Conservation Restriction was developed to assist public water suppliers in protecting the Zone II recharge area of public drinking water wells.

Massachusetts' public water suppliers work hard to provide good drinking water quality to their customers through a variety of methods such as; monitoring and treatment; public education; operation and maintenance; best management practices; and land use regulations. However, these methods alone do not always ensure that a drinking water supply source will remain protected. The single best way for ensuring long-term protection is through land acquisition. Land acquisition prevents potentially threatening land uses and activities from being located near public drinking water supplies.

Water suppliers seeking to acquire land for water supply protection are encouraged to develop a local land acquisition or land management plan. A local plan can be included in the community's Master Plan, or the water supplier's Wellhead Protection (or Source Protection) Plan. The plan should identify critical parcels for acquisition and strategies for managing lands already acquired. Plan components should include:

- (a.) a map showing the land area to be acquired and proximity to the water supply source (such as the Zone II map);
- (b.) a description of how land acquisition supports local protection goals and efforts;
- (c.) current local protection measures (such as bylaws/health regs)
- (d.) potential and existing threats to the water supply (such as potential development of high risk land uses or existing underground storage tanks);
- (e.) the rationale for parcels prioritized for protection;
- (f.) public education and outreach efforts;
- (g.) strategies for managing land once it is acquired; and
- (h.) plans to develop partnerships with land trusts or other similar organizations.



Public water suppliers should also be aware that land acquisitions (for water supply purposes) must be approved by the DEP and require completion of a Permit Application for Land Acquisition (BRP WS-26). As part of the permit approval process, the land acquisition/management plan components (described above) must be submitted along with the permit application. A public hearing and notice is also required.

How to use this Model:

- **Fill** in underlined blanks with the correct information;
- **Replace** [bracketed words] with the appropriate information and remove brackets;
- **Choose** the correct [bracketed / term] and remove brackets.
- **Remove** language in *italics* and the footnotes. This is information for the drafter of the conservation restriction, and not intended to be included in the final restriction.
- **Non-municipal water systems** should replace municipal references where noted (see footnotes).

DEP recommends draft conservation restrictions be submitted to DEP for review prior to acceptance by the public water system (municipality or water district). Conservation restrictions require approval by Mass DEP and the Executive Office of Environmental Affairs.

For questions concerning this Model, contact the DEP Drinking Water Program in Boston or the Regional DEP Office. Additional information on wellhead protection and permits for land acquisition is available on Mass DEP website <http://www.mass.gov/dep/>.

For more information about MA conservation restrictions, see the 'MA Conservation Handbook' available on the Mass Division of Conservation Services website <http://www.mass.gov/dcr/>.

ZONE II CONSERVATION RESTRICTION FOR DRINKING WATER SUPPLY PROTECTION

Town/City of _____¹

We, [Grantor Name(s)], of [Municipality and County], Massachusetts, hereinafter collectively referred to as the "Grantors", for consideration paid and in full consideration of [\$00] [amount in dollars], hereby GRANT in perpetuity to the [Town/City of _____]² through its Board of Water Commissioners, a Massachusetts municipal corporation³ situated in [County] having an address of _____, Massachusetts (hereinafter the "Grantee"), with QUITCLAIM COVENANTS a Conservation Restriction for the purposes of providing and promoting exclusive and perpetual protection of water supply and water quality within the [Name of Source and PWS ID#], and to provide for conservation of soil and other natural resources within the Premises pursuant to the provisions of Massachusetts General Laws Chapter 184, Sections 31 through 33 inclusive, as amended, on that certain vacant parcel of land situated in [Municipality and County], Massachusetts, and hereon containing [00] acres of land, and being more particularly bounded and described in Exhibit A attached hereto and made a part hereof, hereinafter referred to as the "Premises".

Said Premises are shown on a plan entitled _____ dated _____ prepared by _____, and recorded herewith as Plan No. ____ of [year].

Grantee acquires this Conservation Restriction subject to the approval of the Department of Environmental Protection pursuant to Massachusetts General Laws Chapter 40, Sections 39B and 41.

Section I. Purpose

The purpose of this Conservation Restriction is to promote and to provide for the perpetual and exclusive protection of water supply and water quality in the [Name of Source], and to provide for conservation of soil and other natural resources within the Premises. Therefore, the Grantors covenant for themselves, their heirs, devisees, legal representatives, successors and assigns, that the Premises will at all times be held, used, conveyed subject to, and not used in violation of the restrictions in Section II. Any change of use of the land under this Conservation Restriction must be permitted by the [Name of Water System] as well as other [Town/City] boards and commissions.

¹ Water Districts replace Town/City with Name of Water System.

² Water Districts replace Town/City with Name of Water System

³ Water Districts replace municipal corporation with 'public water system'.

Note: If the land to be acquired under this Conservation Restriction borders land acquired under Article 97, or any other lands held by the municipality for public use, you must include the following sentence:

Permits for the change in use must be secured from all departments including, but not limited to [Name of Municipal Boards] which is protected under [cite applicable Massachusetts General Law and Code of Massachusetts Regulation] and in accordance with Article 97 of the Amendments to the Massachusetts Constitution and otherwise by law.

Section II. Prohibited Uses and Activities

Except as set forth in Section III, neither the Grantors nor their successors or assigns of the Grantors will perform nor give permission to nor allow others to perform the following acts on the Premises:

1. No building, mobile home, road, sign or other advertising display, swimming pool, tennis court, utility services, poles and equipment, or other permanent or temporary structures accessory to any residential, commercial, agricultural, recreational, or industrial purpose on, below or above the ground shall be constructed, placed or permitted to remain on said Premises.
2. No soil, loam, peat, gravel, sand, rock, landfill, mineral substance, refuse, trash, debris, junk, waste, vehicle parts or bodies, septage or other unsightly or offensive materials shall be placed, stored or dumped therein the Premises, nor any nuisances allowed to be present on the Premises.
3. No soil, loam, peat, gravel, sand, rock, landfill or other mineral substance or natural deposit shall be excavated, or removed from the Premises, *except* in connection with the agricultural use of the land.
4. No snowmobiles, motorcycles, mopeds, all-terrain vehicles, or other motor vehicles of any kind shall be used, stored, maintained, operated or otherwise allowed on the Premises *except* for vehicles permitted in connection with the agricultural use of the Premises as provided herein in Section III and except for vehicles required for public safety, (i.e., fire, police, ambulance).
5. No pesticides as defined by the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended, shall be transported, used, stored, or applied in any manner or to any extent on or under the Premises.
6. No toxic or hazardous substances, material or wastes, shall be transported, used, stored, applied or disposed of in any manner or to any extent on or under nor transported over or through the Premises.
7. No underground or above ground fuel storage tanks shall be installed, placed or allowed to remain on the Premises.
8. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no other use shall be made of the Premises and no activity

permitted thereon which, in the opinion of the Grantee, is or may become inconsistent with or threatening to the purpose and intent of this Conservation Restriction as herein before stated.

Section III. Permitted Uses and Activities⁴

The provisions of paragraphs 1 through 8 above notwithstanding; the following uses and activities shall not be prohibited by this restriction:

1. The maintenance and use of trails and farm roads located within the Premises for passive recreational purposes such as hiking, bicycle riding, bird-watching, and for agricultural or horticultural purposes.
2. The planting and cutting of trees, shrubs and other vegetation and the selective harvesting of timber in accordance with a cutting plan approved by both the State Forester and the Grantee so long as adequate cover of vegetation is maintained for the control of runoff and erosion in accordance with the terms of the Massachusetts Department of Environmental Management, Division of Forest and Parks best management practices as established by the publication entitled 'Massachusetts Best Management Practices: Timber Harvesting Water Quality Handbook', as updated.
3. Except as prohibited in Section II(5), the carrying on of agricultural crop operations, including tilling the soil, planting, cultivating, harvesting, agricultural composting, grazing of livestock, construction and maintenance of fencing,
4. The use, storage and application of natural soil amendments including manure, lime, potash, agricultural compost and other soil enhancers and chemical fertilizers pursuant to a Natural Resource Conservation Service approved Farm Conservation Plan which shall include a Nutrient Management Plan in conformance with Section II(5), and the submission of a plan for conservation practices appropriate for water quality protection. Such a plan shall be submitted by the Grantors to the Grantee annually for prior written approval as provided in Section IV.
5. The installation, use, and repair of drainage and drainage discharge facilities necessary for agricultural activities in compliance with the Natural Resources Conservation Service recommendations.
6. The maintenance, repair of existing driveways or utility services for agricultural purposes only subject to compliance with state and local laws and subject to the prior written approval of the Grantee, as provided in Section IV.
7. Notwithstanding the permitted uses in Section III (1) through (6), no other use shall be made of the Premises and no activity permitted thereon which, in the opinion of the Grantee, is or may become inconsistent with or threatening to the purpose and intent of this Conservation Restriction as herein before stated.

⁴ The above permitted uses allows for agricultural activities. To develop a conservation restriction that does not permit agricultural uses, omit uses/activities (3), (4) , (5) and (6).

Section IV: Prior Written Approval

The Grantors hereby covenant and agree that Grantors shall not commence any use or activity that requires prior written approval without having obtained Grantee's approval according to the procedures set forth hereunder:

1. The Grantors shall notify the Grantee in writing of any proposed use or activity that requires Grantee approval under the terms of this Conservation Restriction and shall submit to the Grantee plans and such other information as the Grantee may require.
2. The Grantee shall approve such proposed use or activity, with or without conditions, only upon a written finding that (a) the proposed use or activity is consistent with this Conservation Restriction and (b) that such use or activity shall not defeat or derogate from the purposes of this Conservation Restriction. Such approval shall be in writing, delivered to the Grantors in the manner specified in paragraph 4 below.
3. If the Grantee does not approve the proposed activity or use, it shall provide written notice to the Grantors and include the reasons for such denial. Such approval or denial shall be made within sixty (60) days of receiving Grantors written notice requesting approval of said proposed use or activity.
4. Any notice referred to herein shall be in writing. Any notice, request, consent, or communication required hereunder shall be in writing and either served personally or sent by certified mail, return receipt requested, and postage prepaid.

Section V. General Provisions

1. Administration

This Restriction shall be administered, enforced and under control of the Board of Water Commissioners on behalf of the Grantee.

If the Grantee is the Board of Water Commissioners then they hold the Restriction for themselves.

2. Access

For this purpose, the Grantee is hereby granted a permanent easement of access to enter the Premises, or to permit personnel from the Massachusetts Department of Environmental Protection, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, to enter the premises, with reasonable notice to the landowners, for the purpose of inspecting the same to determine compliance with or to enforce this Conservation Restriction, or taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation.

3. Assignability

a. Running of the Burden

This Conservation Restriction sets forth rights, liabilities, agreements and obligations upon and subject to which the Premises shall be held, improved, used, occupied, leased, sold, encumbered or conveyed. The rights, liabilities, agreements and obligations herein set forth shall run with the Premises and shall inure to the benefit of the Grantee and all parties claiming by, through or under the Grantee and shall bind the Grantors and all parties claiming by, through or under the Grantors. The rights hereby granted to the Grantee constitute the perpetual right of the Grantee to enforce this Conservation Restriction. The Grantors hereby covenant for themselves to stand seized and hold title to the Premises subject to the terms of this Restriction.

b. Recording of Instruments

The Grantee shall record and/or register this Conservation Restriction and to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor on behalf of themselves and their successors and assigns appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. The Grantor authorizes the Grantee to record and/or register this Conservation Restriction within thirty (30) days of the date of receipt of having received this Conservation Restriction by means of certified mail return receipt requested. Without limiting the foregoing, the Grantors agree themselves to execute any such instruments upon request.

4. Concurrence Presumed

It being agreed that all parties claiming by, through or under the Grantor shall be deemed to be in accord with the provisions herein set forth and to agree for and among themselves and any party claiming by, through or under them, and their respective agents, contractors, sub-contractors and employees, that the Conservation Restriction herein established shall be adhered to and not violated and that their respective interests in the Premises shall be subject to the provisions herein set forth.

5. Incorporation into Deeds, Mortgages, Leases and Instruments of Transfer

The Grantors hereby agree to incorporate in full or by reference the terms of the Conservation Restriction in all deeds, easements, mortgages, leases, licenses, occupancy agreements or other instrument of transfer by which any interest in all or a portion of the Premises is transferred, including but not limited to a lease hold interest. The Grantors further agree to give written notice to the Grantee of the proposed transfer of any interest in the Premises at least sixty (60) days prior to the proposed date of such transfer.

6. Release

The Grantors intend this Conservation Restriction to be a restriction in gross in perpetuity. This Conservation Restriction may only be released, in whole or in part, by the Grantee pursuant to the procedures for approval by the Department of Environmental Protection established by Chapter 40 Section 15A and 15B, Chapter 184 Section 32 of the General Laws as amended, and in accordance with Article 97 of the Amendments to the Massachusetts Constitution and otherwise by law.

7. Legal Remedies of the Grantee

a. Legal and Injunctive Relief

Grantor expressly acknowledges that a violation of this Conservation Restriction could result in the exercising of the Grantee's right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against violations, including, without limitations, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

b. Non-Waiver

Nothing herein shall impose upon the Grantee any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantee's acceptance hereof. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election by the Grantee as to the manner and timing of the exercising of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

e. Grantee Disclaimer of Liability

By its acceptance of this Conservation Restriction, the Grantee does not assume any liability or obligation relating to the condition of the Premises, including compliance with hazardous materials or other environmental laws and regulations.

8. Extinguishment

a. Determination and Disposition of Proceeds from Extinguishment of Conservation Restriction

The Grantors and the Grantee agree that the grant of this Conservation Restriction to the Grantee gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the Conservation Restriction determined at the time of the grant bears to fair market value of the property before the restriction is applied.

b. Right of Grantee to Recover Proportional Value at Disposition

If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange, involuntary conversion or agreement to release by the Department of Environmental Protection and the Grantee of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

See note at end of document for an explanation of paragraphs a and b

c. Allocation of Expenses Upon Disposition

All related expenses incurred by the Grantors and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantors and Grantee in shares equal to such proportionate value.

9. Extinguishment

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or part, by judicial proceedings in a court of competent jurisdiction. If any change in conditions ever gives rise to the extinguishment or other release of the Conservation Restriction under applicable law, then Grantees shall be entitled to a portion of the proceeds, if any, in accordance with paragraph 8 above.

10. Severability Clause

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Conservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

11. Estoppel Certificates

Upon written request by Grantor, Grantee shall within forty five (45) days execute and deliver to Grantor any document, including estoppel certificate that certifies Grantor's compliance with any obligations of Grantor contained in this Restriction, and that otherwise evidences the status of this Restriction as may be requested by Grantor.

12. Effective Date

This Conservation Restriction shall become effective upon its being duly executed by Grantors, Grantee, Department of Environmental Protection and Secretary of the Executive Office of Environmental Affairs, and its recordation and/or registration with the _____ County Registry of Deeds and/or Land Registration Office of the _____ County Registry District.

Witness our hands and seals this ____ day of _____, year _____.

Grantor _____,

Grantor _____,

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, year _____.

Then personally appeared the above-named [Grantor] and acknowledged the foregoing instrument to be his/her free act and deed, before me.

Notary Public
My Commission expires:

ACCEPTANCE BY THE [TOWN/CITY OF _____] ⁵

We, the undersigned, being a majority of the [governing board] of [Municipality] ⁶ Massachusetts, hereby certify that at a meeting duly held on _____, the (governing board) voted to accept the foregoing Conservation Restriction for Water Supply Protection to the (Grantee) pursuant to Massachusetts General Laws. Chapter 40 Section 39B and 41, and Chapter 184 Section 32.

(Name of Governing Board)

Name(s)

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, year ____.

Then personally appeared the above-named (Name of Governing Board), and acknowledged the foregoing instrument to be their free act and deed, before me.

Notary Public
My Commission expires:

⁵ Water Districts replace Town/City with Name of Water System
⁶ Water Districts replace Municipality with Name of Water System.

APPROVAL BY DEPARTMENT OF ENVIRONMENTAL PROTECTION

The undersigned, Department of Environmental Protection, [appropriate signatory in Regional or Boston Office], hereby certifies that the foregoing Conservation Restriction for Water Supply Protection has been reviewed and approved pursuant to Massachusetts General Laws, Chapter 40 Section 41.

Date

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, year ____.

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be his free act and deed, before me.

Notary Public
My Commission expires:

APPROVAL BY EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

The undersigned Secretary of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction for Water Supply Protection has been approved in the public interest, pursuant to Massachusetts General Laws, Chapter 184 Section 32. Said approval is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the property, and any such pre-existing rights, if any, are not affected by the granting of this Conservation Restriction.

Secretary, Executive Office of Environmental Affairs

Date

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, year ____.

Then personally appeared the above-named _____, and acknowledged the foregoing instrument to be her free act and deed, before me.

Notary Public
My Commission expires:

EXHIBIT A - CONSERVATION RESTRICTION

PROPERTY OF [Name of Grantor(s)]

[Town/City] of _____, MASSACHUSETTS

A. Legal description of the Premises:

To be provided by the surveyor and to conform with the surveyed plan of land recorded in Registry of Deeds.

NOTE

The purpose of paragraphs a. and b in Section 8 is to ensure that if the CR is released (extinguished), the Grantee is reimbursed for the Restriction.

The appraised fair market value of the property before the Conservation Restriction (CR) is $\$(A)$. The appraised fair market value of the property after the Conservation Restriction is applied is $\$(B)$. The value of the Conservation Restriction is $\$(A - B = C)$. The proportionate value of the Conservation Restriction in relation to the fair market value of the parcel before the Conservation Restriction is applied is (C/A) . Such proportionate value of the Grantee's property right shall remain constant and in the proportion of (C/A) to the Grantee and (B/A) to the Grantor, in the event the CR is extinguished.

The fair market value of a CR is the difference between the fair market value of the property before the Restriction is applied. For instance, if the fair market value of a property prior to a CR is \$100,000, and the fair market value is \$10,000 after the CR is applied, then the value of the CR is \$90,00 (or 9/10ths of the fair market value of the parcel before the CR.).

The proportionate value of the CR is assumed to remain constant over time, regardless of whether the fair market value of the property increases or decreases. It is this proportionate value (in this example 9/10ths) to which the Grantee is entitled if the CR is released. To determine the value of a CR years after it was established; the fair market value of the parcel must be determined by an appraisal assuming there was no restriction. Then the ratio (determined at the time the restriction was established) is applied to the fair market value. For example; if at the time of extinguishment the property is appraised (without the CR) to have a fair market value of \$200,000 (a \$100,000 increase), the Grantee would be entitled to 9/10ths of \$200,000.

In order to calculate the amount of funds due the grantee in the event the restriction is released: the amount paid for the CR and the fair market value of the property before the restriction is applied, should be stated in the CR.

If the CR is acquired through a gift or bargain sale, then the proportionate value would be the ratio between the fair market value of the property before establishment of the restriction and the amount the Grantee actually paid, if anything, for the Restriction.)